

Executive Registry

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 22 1975

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TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Office of Federal Procurement Policy (OFPP) Regulation No. 1; Federal Procurement Regulatory System

Enclosed is the initial draft of a regulation to be issued by the Administrator for Federal Procurement Policy pursuant to Public Law 93-400, which requires that the Administrator establish (i) a system of coordinated and, to the extent feasible, uniform procurement regulations for the executive agencies, and (ii) criteria and procedures for soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures and forms. This regulation is the first step in accomplishing these objectives.

Official agency views on the enclosed draft OFPP Regulation No. 1 should be submitted to the Administrator for Federal Procurement Policy by February 29, 1976. Following receipt of comments, a public meeting will be scheduled for the purpose of hearing oral presentations.

In addition, the Department of Defense and the National Aeronautics and Space Administration are requested to begin preparation of a joint plan of action for a workable common procurement regulation, for submission to the Administrator by July 1, 1976.

Further, the Department of Defense and the General Services Administration are requested to begin the preparation of a joint plan of action for implementation of the requirements of OFPP Regulation No. 1, for submission to the Administrator by July 1, 1976, the intended effective date of the regulation. This effort should include a long range plan providing for eventual publication of the Armed Services Procurement Regulation (ASPR) and Federal Procurement Regulations (FPR) in the same Title of the Code of Federal Regulations, with a common format and numbering system.

Questions may be referred to Mr. LeRoy J. Haugh, Assistant Administrator for Regulations, telephone (202) 395-6186.

Hugh E. Witt

Administrator for
Federal Procurement Policy

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Enclosure

OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP) REGULATION NO. 1

Federal Procurement Regulatory System

1. Purpose.

a. The purpose of this regulation is to establish the Federal Procurement Regulatory System (FPRS), an integrated system of coordinated and, to the extent feasible, uniform procurement regulations for the executive agencies, under the direction of the Administrator for Federal Procurement Policy.

b. The objectives of the system are to bring greater coordination, simplicity, and uniformity into the Federal procurement process, to arrest and reduce the proliferation of diverse and inconsistent procurement regulations, including those implementing or supplementing the primary regulations, and to establish criteria and procedures for public participation in the regulatory process.

2. Background.

Public Law 93-400, which established the Office of Federal Procurement Policy (OFPP), delineates the functions of the Administrator for Federal Procurement Policy. This regulation implements the following provisions of that law:

a. Establishment of a system of coordinated and, to the extent feasible, uniform procurement regulations for the executive agencies; and

b. Establishment of criteria and procedures for soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms.

3. Authority.

Under Public Law 93-400, authority for Federal procurement policy is vested in the Administrator for Federal Procurement Policy. All executive agency procurement policies, regulations, procedures, and forms are subject to those prescribed by the Administrator.

4. Applicability.

The provisions of this regulation apply to all executive agencies of the Federal Government making procurements from appropriated funds of:

- (a) property other than real property in being;
- (b) services, including research and development; and
- (c) construction, alteration, repair, or maintenance of real property.

The term "executive agency" means an executive department, a military department, and an independent establishment within the meaning of sections 101, 102, and 104(1), respectively, of title 5, United States Code, and also a wholly-owned Government corporation within the meaning of section 101 of the Government Corporation Control Act (31 U.S.C. 846).

5. Federal Procurement Regulatory System (FPRS).

a. The FPRS, under the direction of the OFPP, is hereby established, and shall consist of: OFPP Regulations, applicable to all executive agencies; the Armed Services Procurement Regulation (ASPR), applicable to the Department of Defense (DOD) and the National Aeronautics and Space Administration (NASA); and the Federal Procurement Regulations (FPR), applicable, except for NASA, to the civilian executive agencies and in certain authorized areas to all executive agencies. In addition, the FPRS includes the secondary procurement regulations of executive agencies which implement or supplement OFPP Regulations, the ASPR, or the FPR.

b. The FPRS embraces not only the content of procurement regulations, but also their format, numbering, methods of publication and distribution, and controls over implementing and supplementing regulations. b

c. ASPR and FPR policies, regulations, procedures, and forms shall be in accordance with Public Law 93-400, OFPP Regulations and other directives, and other applicable laws and regulations.

d. OFPP Regulations will be issued by the Administrator for Federal Procurement Policy, and will deal with major procurement policy issues. OFPP Regulations will be independent of the Office of Management and Budget (OMB) system of Circulars and Bulletins.

e. In addition to issuing regulations, OFPP will, on a selective basis, coordinate the development of, or approve in advance, the text of ASPR and FPR provisions. Such OFPP coordination or approval will be transmitted to DOD and the General Services Administration (GSA), by numbered letter, and the text, when published, shall be identified as having been so approved.

f. Implementing and supplementing regulations issued by executive agencies shall not contain provisions which duplicate, are inconsistent with, or increase the use of any authority, policy, or requirement provided in OFPP Regulations, the ASPR, or FPR. DOD and GSA shall review agency and department regulations to assure compliance and control.

g. One-time exceptions or deviations from the requirements of OFPP Regulations may be granted in the same manner as authorized by the ASPR and FPR for ASPR and FPR deviations. A copy of each such exception or deviation authorization shall be furnished the Administrator for Federal Procurement Policy. Other deviations from OFPP Regulations, such as continuing or class deviations, must be approved in advance by the Administrator.

h. Executive agencies authorized to issue collateral regulations which, although not primarily concerned with the procurement process, have an effect on Federal procurement, shall coordinate such regulations with the principal contracting agencies affected and the OFPP prior to publication for comment in the Federal Register.

6. Development and Issuance of the ASPR and FPR.

a. Subject to general guidance of the Administrator for Federal Procurement Policy, the Secretary of Defense and the Administrator of General Services may prescribe instructions and procedures for the development and issuance of the ASPR and FPR, respectively. Existing organizations for this purpose, such as the ASPR Committee in the Office of the Assistant Secretary of Defense (Installations and Logistics), DOD, and the FPR staff in GSA, may continue to be utilized.

b. DOD and GSA, jointly, shall establish a procedure for close coordination between the ASPR and FPR which will minimize duplication of effort and achieve the greatest feasible uniformity in the development and revision of the two regulations. Such procedure shall include provisions

for consultation with the OFPP on significant issues, and for otherwise irreconcilable differences to be resolved by the Administrator for Federal Procurement Policy. In areas where both primary regulations now have coverage, neither agency will amend that coverage without the concurrence of the other. Changes or additions to the ASPR and FPR shall be uniform except to the extent necessary to accommodate significant differences in laws, program requirements, or agency operations. Such accommodations shall be kept to a minimum.

c. In the development of the ASPR and FPR, the views and, so far as possible, agreement of agencies and departments affected shall be obtained. For coordination and advisory purposes, existing mechanisms, such as the ASPR Committee and its subcommittee structure within DOD, and the FPR staff and the FPR Committee (formerly the Interagency Procurement Policy Committee) under GSA cognizance may be utilized. In addition, the Planning Staff of the Interagency Procurement Policy Group may be consulted on significant issues.

7. Public Participation.

a. The views of interested non-Governmental parties and organizations shall be given due consideration in the formulation of Federal procurement policy. Accordingly, the public will be afforded an opportunity to comment on proposed OFPP Regulations and on proposed significant changes or additions to the ASPR and FPR by means of the publication of a notice in the Federal Register, and in other publications as appropriate. Such notice shall include a statement of purpose and the text or a summary of the proposed issuance, changes, or additions, and shall invite interested parties to comment on the proposals. If a summary is published, the notice shall advise where the text may be examined. The notice shall also advise whether a copy of any related agency or other official report or recommendation is available for examination. Any determination by the Secretary of Defense or the Administrator of General Services, or their designees for such purpose, as to whether a particular change or addition to the ASPR or FPR, respectively, is a "significant" change or addition as contemplated by this regulation, shall be final.

b. Lists will be maintained of industry associations, professional societies, and other interested parties that have expressed a continuing desire to comment on proposed

OFPP Regulations or proposed changes in the ASPR and FPR, and comments on substantive changes will ordinarily be solicited directly from such associations and parties in addition to any notice that may be published in the Federal Register.

c. The solicitation of views from outside the Government may be waived, with the advance approval of the Administrator for Federal Procurement Policy, where circumstances make such solicitation impracticable, such as a requirement to implement a new statute in a relatively short time.

d. Normally, 60 days shall be provided for the submission of comments, unless a shorter time period is required by unusual circumstances.

e. When an executive agency or component determines that a public meeting would materially benefit the consideration of the issues in connection with the adoption, amendment, or repeal of a procurement policy or regulation, or would be likely to develop significant additional information or views, or provide useful public visibility to regulatory determinations, the agency or component may convene such a public meeting.

f. Unsolicited proposals for changes or additions to OFPP Regulations, the ASPR, and FPR shall be considered, and the reasons for any rejection shall be furnished to the proposers.

g. Regulations of executive agencies and their major components which amplify or otherwise depart from the substance of OFPP Regulations, the ASPR, and FPR will be issued in a manner consistent with the foregoing procedures, after first obtaining any necessary deviation authorization.

8. Public Meetings.

a. When a public meeting is to be held, notice shall be published in the Federal Register at least 10 days prior thereto. The notice shall give the time and place of the meeting and shall include a statement of purpose and either the text or a summary of the matter to be considered. If a summary is published, the notice shall advise where the text may be examined. The notice shall advise whether a copy of any related agency or other official report or recommendation is available for examination. The notice shall also invite interested organizations, associations,

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firms, and members of the public to submit data, views, or arguments in writing, and shall offer an opportunity for oral presentation by or on behalf of any interested party making a written submission at least 24 hours in advance of the meeting.

b. Criteria and procedures for public meetings involving proposed policies and regulations of the Office of Federal Procurement Policy are the subject of a separate OFPP Regulation.

9. Advance Notice to OFPP.

DOD and GSA shall give the Administrator for Federal Procurement Policy advance notice of all major procurement regulations under consideration. The purposes of this requirement are: (a) to enable the Administrator to keep the Congress fully and currently informed; (b) to permit timely designation by the Administrator of proposed procurement policies and regulations which shall be subject to formal public meetings of the OFPP (in accordance with Section 14(b) of Public Law 93-400); (c) to permit identification of regulations whose text is to be approved by the Administrator; and (d) to ensure the maximum feasible uniformity in the regulations.

10. Reporting.

DOD and GSA shall submit to OFPP a quarterly listing of all open cases or actions in process to adopt, repeal, or amend either the primary procurement regulations (ASPR and FPR) or the subsidiary procurement regulations of other executive agencies. Such listing shall be brief, but descriptive enough to indicate the substance and purpose of each action contemplated.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

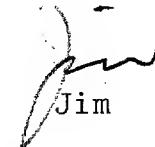
FROM: Director of Logistics 2 C 02 [REDACTED] Building		EXTENSION	NO.		
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TO: (Officer designation, room number, and building)		RECEIVED	FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
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Office of Federal Procurement Policy Regulation No. 1 was issued in draft form on 22 Dec 75. The basic problem with the regulation was that it placed DOD and NASA under the ASPR with all other agencies coming under the FPR. The attached letter is the culmination of several meetings between [REDACTED], officials at OFPP, and me. It has been reviewed by OFPP, and we have been told that it is approved. Mr. Witt, the Administrator for OFPP, will provide written approval by separate correspondence. The specific request is in the next to last paragraph. Important in the request is the fact that our flexibility is maintained since we are agreeing only to operate our procurement system to the "maximum extent possible" in accordance with the ASPR.

OFPP has requested our okay to distribute a copy of the attached letter, along with their approval, to the Secretary of Defense since that

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department controls the ASPR.
If okay with you, we will
provide such approval sepa-
rately and only after we have
reviewed and accepted the OFPP
approval letter.

A handwritten signature consisting of a stylized 'J' and 'm' connected by a horizontal stroke.

Jim

Att.